FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5416 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. P. K. Dhakephalkar with A.M. Rajabally for petitioners

Mr. C.M. Kothari for R-3 & 4.

CORAM: SMT. RANJANA DESAI, J.
5/9/05

P.C.:-

The petitioners are original defendants 10, 11 & 12 in Suit No. 4186/98 pending on the file of City Civil Court at Mumbai. Basically the objection of the petitioner is to the manner in which the learned Judge of the City Civil Court, Mumbai is dealing with the suit.

2. It appears that plaintiff 1 has filed his afidavit of examination-in-chief. Thereafter his examination-in-chief is also recorded in the court. He has been

cross-examined by the advocate of defendants 1 and 2.

3. My attention is drawn to the Roznama of the suit. The 1st plaintiff’s examination-in-chief in the court has begun on 14/6/2005. During the examination-in-chief, several documents were sought to be exhibited. It appears from the Roznama that the learned Judge has marked the said documents "subject to the objection raised by the defendants".

4. Mr. Dhakephalkar, learned counsel for the petitioners contended that the objection to the admissibility of the document has to be decided there and then and the learned Judge could not have in law said that the objection could be decided at the final hearing of the suit. He drew my attention to Order 18 Rule 4 of the Civil Procedure Code to substantiate his contention. The learned counsel also relied on a judgment of this court in Bharat R.

Desai & Anr. v. Naina Mohanlal Bhal, 2004 (2) All M.R. 291, where this court has while considering Order 13 Rule 4 and Order 18 Rule 4 of the Code held that while recording the evidence the court must proceed to resolve immediately the questions as regards the proof and admissibility of documents and deferring the said questions to an uncertain date in future is neither in the interest of justice nor does it subserve the object of expedition. The learned counsel contended that the deferring of objections as regards admissibility of documents done by the trial court is clearly contrary to law and the learned Judge has obviously not considered the clear ennunciation of law made by this court. The learned counsel contended that the learned Judge ought to ensure that the defendants get sufficient time to consider the evidence of the plaintiff’s witness recorded in affidavit form so that they can decide in what manner the plaintiff or plaintiff’s witnesses have to be

cross-examined. He submitted that the affidavit is given at the last minute and sufficient time is not given to the defendants to consider the affidavit of the plaintiffs' witnesses so that they could be effectively cross-examined. Mr. Dhakephalkar further drew my attention to certain remarks made by the learned Judge against the defendant's counsel while recording evidence on 22/6/05. He submitted that they may be expunged.

5. Mr. Kothari, learned counsel for respondents 3 & 4 on the other hand contended that the petitioners ought to have approached this court at the earliest. Now the plaintiffs' examination and cross-examination is over and plaintiff 2 is in witness box. He submitted that though the defendants objected to the documents being exhibited, the defendants never called upon the learned Judge to decide whether the document ought to be exhibited or not and in the circumstances, it is not open to the defendants now to contend before this

court that the learned Judge has erred.

6. Mr. Kothari also submitted that the affidavit of examination-in-chief was given well in advance to the defendants and no grievance could be made in this behalf.

7. Having gone through the judgment of this court in Bharat Desai's case (supra), I feel that there is some substance in Mr. Dhakephalkar's submission that objection to the admissibility of the document should be decided at the outset. However, I do feel that the petitioners ought to have approached this court at the earliest and not at a belated stage when the evidence of the first plaintiff is over.

8. It is also true that if the affidavit of examination-in-chief is filed then the defendants must be given reasonable time to ponder over it so that they can effectively

cross-examine the plaintiffs' witness. In the circumstances, and considering the stage of trial I feel that the following order should meet the ends of justice;

a) In future the trial court is directed to decide the objections regarding admissibility of documents when the document is produced in the light of judgment of this court in Bharat Desai's case (supra). Copy of the affidavit of examination-in-chief of witness must be given to the defendants well in advance and reasonable time must be given to the defendants to consider its contents so that plaintiffs' witnesses can be effectively cross-examined. What is reasonable time will be decided by the learned Judge.

b) It appears that on 22/6/05 the learned Judge has made some caustic remarks about the conduct of the learned counsel appearing for the defendants. It appears that the interruptions made by him have caused

inconvenience to the court. It appears that in the heat of moment the learned counsel for the defendants has interrupted the court. He should avoid it in future. The dignity of the court must be maintained. In the peculiar facts and circumstances of the case, however, the said observations would not really reflect on the character of the learned counsel for the defendants and the plaintiffs certainly cannot take advantage of those observations. However, if such occurences become a routine affair then the court would be justified in taking serious note of it. It is, however, hoped that in future both sides would conduct themselves with decorum and maintain the dignity of the court so that the suit is disposed of expeditiously and that will be in the interest of both sides. Unnecessary interruptions cause inconvenience to the court and affect its functioning.

c) I am informed that the learned Judge has closed the evidence of

plaintiff 2. I think it is necessary to set aside that order in the interest of justice. The learned Judge shall allow the defendants to cross-examine plaintiff 2.

d) I am also informed that that High Court had made this suit time bound and the suit was to be disposed of by 30th June, 2005. It is obvious why the learned Judge has not been able to abide by the time schedule set down by this court. In the circumstances of the case I extend the time to dispose of the suit by a further period of three months. Needless to say that plaintiff 2 can produce the documents which he wants to produce. The learned Judge shall consider the aspect of admissibility of the documents in the light of aforementioned judgment of this court. The copies of the said documents may be given to the defendants well in advance. Needless to say that objection to admissibility has to be genuine and not frivolous.

(e) Petition is disposed of in the aforestated terms.

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